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Filing date: **01/13/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Claus Schmitz		
Entity	Individual	Citizenship	GERMANY
Address	815 Brownell St. Louis, MO 63122 UNITED STATES		

Attorney information	Nelson Nolte Polster, Lieder, Woodruff & Lucchesi, L.C. 12412 Powerscourt Dr. Ste. 200 St. Louis, MO 63131 UNITED STATES trademarks@patpro.com, nnolte@patpro.com, ctandler@patpro.com Phone: 314-238-2400
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Registration Subject to Cancellation

Registration No	3139290	Registration date	09/05/2006
International Registration No.	NONE	International Registration Date	NONE
Registrant	SOCIETE ANONYME DES BAINS DE MER ET DU CERCLE DES ETRANGERS A MONACO Place du Casino MC-98000 MONACO MONACO		

Goods/Services Subject to Cancellation


Class 043. All goods and services in the class are cancelled, namely: SERVING AND CATERING OF FOOD AND DRINK

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77256754	Application Date	08/16/2007
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	MOSAIC
Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2004/12/03 First Use In Commerce: 2004/12/03 Restaurant and bar services

Attachments	77256754#TMSN.jpeg (1 page)(bytes) Microsoft Word - Notice of Opposition.pdf (4 pages)(36741 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nelson D. Nolte/
Name	Nelson Nolte
Date	01/13/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CLAUS SCHMITZ)	
)	
Petitioner,)	
)	
v.)	Cancellation No.
)	
SOCIETE ANONYME DES BAINS)	
DE MER ET DU CERCLE DES)	
ETRANGERS A MONACO)	
)	
Registrant.)	

PETITION FOR CANCELLATION

In the matter of a Trademark Registration No. 3,139,290, registered September 5, 2006 under the Trademark Act of 1946 for the mark MOSAÏK MONTE-CARLO, Petitioner believes that he may be damaged by such registration of said alleged trademark and hereby petitions for cancellation of the same:

The grounds for cancellation are as follows:

1. Petitioner, Claus Schmitz, is citizen of the country of Germany and has a mailing address of 815 Brownell, St. Louis, Missouri 63122. Petitioner offers restaurant and bar services the mark MOSAIC.

COUNT I - LIKELIHOOD OF CONFUSION

2. Commencing prior to the earliest priority date to which Registration 3,139,320 is entitled, Petitioner has, and is now, engaged in the offering of restaurant and bar services under the mark MOSAIC, and advertisement thereof, and to identify and designate same, and to distinguish those services and businesses from those of others.

3. Petitioner is the owner of, and will rely on herein, pending U.S. Trademark Application No. 77/256,754 for MOSAIC in International Class 43 for “Restaurant and bar services,” said application having been rejected in view of Registrant’s ‘290 MOSAÏK MONTE-CARLO registration as well as his common law rights and date of first use of from at least December 3, 2004.

4. Since and before Registrant’s registration of Registrant’s MOSAÏK MONTE-CARLO mark, Petitioner has used, advertised, produced and offered its goods, services, stores and business under and in connection with said mark to the public, through various channels of trade, and in commerce, with the result that Petitioner’s customers and the public in general have come to know and recognize the mark of Petitioner and associate same with Petitioner and/or the goods and services produced, advertised, marketed, distributed, and sold directly or indirectly by Petitioner, Petitioner’s business and/or stores. Petitioner thus has built up goodwill in connection with the sale of its products and services under Petitioner’s MOSAIC mark.

5. On information and belief, the MOSAÏK MONTE-CARLO registration by registrant is identical to and a colorable imitation of, and is similar in sight, sound and/or connotation to, Opposer’s prior and aforesaid MOSAIC mark and is a colorable imitation of, and is similar in sight, sound and/or connotation to Petitioner’s prior MOSAIC mark.

6. On information and belief, the services set forth in the MOSAÏK MONTE-CARLO Registration petitioned for cancellation herein are or may be found to be similar and/or related to the services and goods in connection with which Petitioner its marks. On information and belief, the services set forth in Registrant’s registration are and/or may be sold through the same and/or similar channels of trade, and/or to the same general class of purchasers, in and to which Petitioner’s products, services and business are marketed and/or sold.

7. On information and belief, the MOSAÏK MONTE-CARLO registration may be likely to cause confusion, mistake, and/or to deceive as to origin, sponsorship, and/or association of Registrant's services as identified in the registration by Registrant vis-a-vis Petitioner and/or his MOSAIC mark, and/or may mislead purchasers of Registrant's and/or Petitioner's goods and/or services, and/or the public in general, into believing that Registrant's services are sold by, emanate from, and/or in some way, directly or indirectly, are associated with Petitioner or his mark.

8. Moreover, the U.S. Patent and Trademark Office has barred Petitioner's '754 application for registration based on an asserted likelihood of confusion, but in such instance, it is Petitioner who enjoys priority.

COUNT II - ABANDONMENT

9. Petitioner restates and realleges 1-8, inclusive, above, of this Petition for Cancellation, and hereby incorporates same as if fully set forth herein.

10. Registrant has abandoned use of its registered MOSAÏK MONTE-CARLO mark without the intent to resume such use, such that the mark has lost the capacity to serve as a source indicator for Registrant's services.

WHEREFORE, this Petitioner, Claus Schmitz, believes and alleges that he may be damaged by said registration of the MOSAÏK MONTE-CARLO mark of Registration No. 3,139,290, as aforesaid, and prays that:

A. Judgment in the present petition for cancellation be entered in favor of Petitioner on Counts I and II, inclusive, of this Petition for Cancellation;

B. The present petition be sustained; and

C. Registration No. 3,139,320 be cancelled.

Respectfully submitted,

CLAUS SCHMITZ

/Nelson D. Nolte/

Nelson D. Nolte

POLSTER, LIEDER, WOODRUFF & LUCCHESI, L.C.

12412 Powerscourt Dr. Ste. 200

St. Louis, MO 63131

Date: January 13, 2009